

Senate Bill No. 1888

CHAPTER 891

An act to amend Section 6108 of the Public Contract Code, relating to public contracts.

[Approved by Governor September 28, 2000. Filed
with Secretary of State September 29, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1888, Hayden. Public contracts: sweatshop labor.

Under existing law, state agencies must provide in every contract for procurement that no equipment, materials, or supplies provided under the contract are produced by forced labor, convict labor, or indentured labor under penal sanction. This prohibition does not apply to procurement related to a public works contract.

This bill would require the prohibition to also include abusive forms of child labor or exploitation of children in sweatshop labor, as defined, and would state the intent of the Legislature to adopt a procurement policy prohibiting procurement of materials produced with the use of these forms of labor.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to establish a procurement policy of the State of California prohibiting purchase of any materials, goods, or services produced by or with the benefit of forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor, or exploitation of children in sweatshop labor.

SEC. 2. Section 6108 of the Public Contract Code is amended to read:

6108. (a) (1) Every contract entered into by any state agency for the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, shall require that a contractor certify that no foreign-made equipment, materials, or supplies furnished to the state pursuant to the contract have been produced in whole or in part by forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor shall agree to comply with this provision of the contract.

(2) The contract shall specify that the contractor is required to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (1).

(b) (1) Any contractor contracting with the state who knew or should have known that the foreign-made equipment, materials, or supplies furnished to the state were produced in violation of the conditions specified in subdivision (a) when entering into a contract pursuant to subdivision (a), may, subject to subdivision (c), have any or all of the following sanctions imposed:

(A) The contract under which the prohibited equipment, materials, or supplies were provided may be voided at the option of the state agency to which the equipment, materials, or supplies were provided.

(B) The contractor may be assessed a penalty which shall be the greater of one thousand dollars (\$1,000) or an amount equaling 20 percent of the value of the equipment, materials, or supplies that the state agency demonstrates were produced in violation of the conditions specified in paragraph (1) of subdivision (a) and that were supplied to the state agency under the contract.

(C) The contractor may be removed from the bidder's list for a period not to exceed 360 days.

(2) Any moneys collected pursuant to this subdivision shall be deposited into the General Fund.

(c) (1) When imposing the sanctions described in subdivision (b), the contracting agency shall notify the contractor of the right to a hearing if requested within 15 days of the date of the notice. The hearing shall be before an administrative law judge of the Office of Administrative Hearings in accordance with the procedures specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The administrative law judge shall take into consideration any measures the contractor has taken to ensure compliance with this section, and may waive any or all of the sanctions if it is determined that the contractor has acted in good faith.

(2) The agency shall be assessed the cost of the administrative hearing, unless the agency has prevailed in the hearing, in which case the contractor shall be assessed the cost of the hearing.

(d) (1) Any state agency that investigates a complaint against a contractor for violation of this section may limit its investigation to evaluating the information provided by the person or entity submitting the complaint and the information provided by the contractor.

(2) Whenever a contracting officer of the contracting agency has reason to believe that the contractor failed to comply with the requirements under paragraph (1) of subdivision (a), the agency shall refer the matter for investigation to the head of the agency and, as the head of the agency determines appropriate, to the Director of Industrial Relations or the Attorney General.

(e) (1) For purposes of this section, the term “forced labor” shall have the same meaning as in Section 1307 of Title 19 of the United States Code.

(2) “Abusive forms of child labor” means any of the following:

(A) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict.

(B) The use, procuring or offering of a child for prostitution, for the production of pornography, or for pornographic performances.

(C) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of illicit drugs.

(D) All work or service exacted from or performed by any person under the age of 18 either under the menace of any penalty for its nonperformance and for which the worker does not offer oneself voluntarily or under a contract the enforcement of which can be accomplished by process or penalties.

(E) All work or service exacted from or performed by a child in violation of all applicable laws of the country of manufacture governing the minimum age of employment, compulsory education, and occupational health and safety.

(3) “Exploitation of children in sweatshop labor” means all work or service exacted from or performed by any person under the age of 18 years in violation of more than one law of the country of manufacture governing wage and benefits, occupational health and safety, nondiscrimination, and freedom of association including the right to organize unions to bargain collectively.

